a record of stakes or wagers in or relating to a lottery.

The learned Deputy submits that if the learned Magistrate did not understand the nature of these documents he should have asked for the necessary explanation from the expert witness. I do not think that this is a fair way of stating the position. Before the expert had concluded his evidence the prosecution officer should have asked the learned Magistrate whether he was satisfied or required further explanation and then, if the learned Magistrate required further explanation, the prosecution officer should have asked the expert the necessary questions to elicit the further explanation required by the learned Magistrate. But this was not done.

Appeal dismissed.

Solicitors:—*Pillai, Lim, Lee & Hwang; G. Naughton Christie.*

TENG SER SIONG v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) May 7, 1963]

[K.L. — F.M. Criminal Appeal No. 10 of 1963]

Criminal Law—Murder—Conspiracy to rob—Fatal stabbing during robbery—Denial by accused of knowledge of knife in possession of person who stabbed—Accomplice evidence of such knowledge—Whether safe to convict on such evidence—Corroboration of accomplice evidence—Whether evidence produced corroboration of robbery or of knowledge of weapon—Misdirection—Penal Code ss.34, 302, 457.

The appellant was convicted for murder, which was said to have been committed in pursuance of a design to rob by four conspirators and during which robbery the deceased was fatally stabbed by one of four conspirators. The person who had done the stabbing was not apprehended. The appellant admitted participating in the robbery, but denied knowledge of possession of a deadly weapon by one of the conspirators or of any design to cause injury. The evidence of one of the conspirators apprehended was that the appellant produced housebreaking paraphernalia and a knife from the back of his car and handed the knife to the person who had done the stabbing. This was stated to have taken place just before the entry into the deceased's shop. It was also proved that a watch found on the premises of the robbery was the property of the appellant. On this evidence the trial judge stated in his direction to the jury. "The finding of the wrist watch at the scene of the crime, if you are satisfied beyond reasonable doubt to be the property of the accused and that he was wearing it that morning is in my mind independent corroborative evidence and is a matter for your consideration as a question of fact."

Held: this amounted to a misdirection because the crucial point in the whole case was the state of knowledge of the appellant that among the house-breaking paraphernalia there was a knife. It was on that point that corroboration of the evidence was necessary if the appellant was to be implicated and it was wrong to suggest that such corroboration was to be found in the finding of the watch.

COURT OF APPEAL (CRIMINAL).

Richard Talalla for the appellant.

Harun Mahmud Hashim (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted for murder in contravention of section 302 of the Penal Code and was sentenced to death.

Against that conviction he has now appealed.

The charge against him was that on 8th June last year at a rubber estate between Segamat and Gemas he murdered a Chinese shopkeeper Lee Pak.

At this stage it is unnecessary to recapitulate the evidence at length but, briefly, what it made out was that some time previous to 8th June the accused, a man Derani bin Leman, a man Wong Kiew and another Chinese formed a design to visit the shop of the deceased during the night, when it was known (being the end of the month) there would be a considerable amount of money in the till, and rob the contents of the shop.

In pursuance of that design the four conspirators went to the shop about half past three in the morning and when they failed to gain an entry in the normal way one of them effected an entry by removing some tiles from the roof. Some or all of the conspirators then entered and there was a struggle with the shopkeeper in the course of which he was stabbed to death by one of them.

The prosecution case was that the present appellant was the organiser and prime mover in all this; that it was the present appellant and the unknown Chinese who entered the shop; that just before the entry the present appellant had produced a bundle of housebreaking paraphernalia and a knife from the back of the car in which the conspirators had travelled to the scene and that he handed this knife to the unknown Chinese who made use of it in the subsequent struggle. And, of course, if that was the true state of affairs there was ample authority for saying, and it was for the jury to say, that by reason of section 34 of the Penal Code the appellant was guilty of murder.

It is to be observed, however, that except for one thing the prosecution case depended on the evidence of Derani and Wong Kiew, who were called as prosecution witnesses, and both these people were clearly accomplices.

Derani's evidence so far as it implicated the appellant in the offence of murder was that the appellant went to the back of the car and took

out a bundle which, when opened, contained housebreaking paraphernalia.

The evidence of Wong Kiew went further. He said that he saw the appellant bring out a knife, which was subsequently found on the premises stained with blood, from the bundle of housebreaking paraphernalia and at a later stage immediately before entry was effected the appellant handed it to the unknown Chinese. If that was true it was sufficient to make out that the appellant was guilty of murder because it made out that he had knowledge that a deadly weapon was in active circulation and it gave rise to the inference that it was intended to use that weapon if necessary.

There was one other piece of evidence. Some two days after the killing the relatives of the dead man had found on the premises a watch which they did not recognise as his and at the trial this watch was proved (by the evidence of Derani and Wong Kiew) to be the property of the appellant. This piece of evidence, however, was without importance because the appellant who gave evidence admitted that the watch was his and that on the night in question he had lost it.

His version of the affair as a whole was that he admitted participating in the robbery but said that Wong Kiew was the leader; that he had no idea that there was any intention of using violence; and that he was surprised when in the course of the struggle in the shop the unknown Chinese produced a knife and used it.

It is hardly necessary to say that in summing-up the case as it stood to the jury they should be given a clear and unequivocal warning and direction on the subject of accomplice evidence. And up to a point the trial Judge gave an adequate caution. He explained what an accomplice was. He explained why Derani and Wong Kiew were to be regarded as accomplices and he warned that if they were regarded as accomplices it would be unsafe to convict on their evidence alone unless it was corroborated in a material particular implicating the accused.

But then he said something which, in our view, amounted to a misdirection. What he said was this:—

"The finding of the wrist watch at the scene of the crime, if you are satisfied beyond reasonable doubt to be the property of the accused and that he was wearing it that morning is in my mind independent corroborative evidence and is a matter for your consideration as a question of fact."

In our view that direction was wrong. The crucial point in the whole case was the state of knowledge of the appellant. Did he know that among the paraphernalia there was a knife? There was no doubt as to his being present. That was fully admitted. The only question was the question of his knowledge and it is hardly necessary to observe that the finding of the watch had no bearing whatsoever on that crucial question.

It is one of the main reasons for distrusting the evidence of an accomplice that he knew so much about what has happened that he is able to furnish many truthful details that they give a spurious appearance of verisimilitude to the untruthful portions of his evidence. In the present case a great deal of what Derani and Wong Kiew said was undoubtedly true and was indeed admitted by the appellant. The real question was was the portion of the evidence that pointed to knowledge on the part of the appellant to be believed? It was on that point that corroboration of the evidence was necessary if the appellant was to be implicated and in our view it was wrong to suggest that such corroboration was to be found in the finding of the watch.

In the circumstances the conviction for murder cannot stand.

The question then arises what course this Court should take. A serious offence has been committed in the course of which a man has lost his life and though criminal responsibility for that loss cannot now be attributed to the appellant he certainly participated in a robbery.

We do not think that any useful purpose would be served by a retrial and in all the circumstances we propose to enter a conviction in contravention of section 457 of the Penal Code and impose a sentence of 14 years' imprisonment.

Order accordingly.

HAJI MUSA v. BAHAROM KHALID

[O.C.J. (Suffian J.) May 11, 1963]

[Alor Star — Civil Suit No. 144 of 1960]

Limitation—Purchase of land in 1943 when moratorium had commenced—Death of vendor before moratorium lifted—Whether claim limitation barred—Kedah Limitation Enactment No. 60, ss.22 and 32—Limitation Ordinance, 1953, s.9(1).

In 1943 when Kedah was under Siamese administration the plaintiff bought a piece of land from one Khalid, defendant's father, since deceased, and they executed an agreement under which one of the terms was that Khalid was to perfect the transfer in the plaintiff's favour only on there being no objection from the authorities. Khalid died in 1946. In 1959 the defendant was granted letters of administration to his father's estate. In 1960 the plaintiff filed this suit praying for an order that the defendant as administrator of the estate transfer the land concerned to him.

Held: (1) when the contract for the sale of land was made in 1943 the moratorium had commenced. Limitation did not therefore start to run until October 1, 1949